IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 360 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SARDARSINH JHALA

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 360 of 2002

MR JM PANCHAL for Petitioner No. 1

MR KJ PANCHAL for Petitioner No. 1

MR PR ABICHANDANI, ADDL.PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 30/09/2002

ORAL JUDGEMENT

Rule. Mr. P.R.Abichandani, Addl. Public

Prosecutor waives service of rule for respondent State. At the request of the parties, the matter is taken up for hearing today.

2. By this revision application, the revisioner, who is an accused in criminal proceedings before the Sessions Court, challenges the common order passed by the Sessions Court on 23.7.2002 below Ex.11 and Ex. 41 in Sessions Case No. 49 of 1990. Exhibit 11 was tendered for discharge of the accused by accused Nos. 1, 2, 3 and 4 on 31.3.1994, whereas Ex.41 was preferred on 9.7.2002 praying for remand of the case for compliance of the order of the Sessions Court in Criminal Revision Application Nos. 54/97 and 94/88 by the Magisterial Court. Learned Additional Sessions Judge by the impugned order, rejected both the applications and hence, this revision application.

3. In order that the contentions raised before this Court may be appropriately appreciated, certain facts need to be stated.

3.1 A private complaint came to be lodged by Sumra Juma Haji of village Masitiya in the Court of JMFC, Jamnagar for offences punishable under Sections 302, 147, 148, 149, 32 and 114 of IPC against present revisioner and four others, who all were working with LCB, Jamnagar. The said complaint was registered as M Case No. 7/86. As per the allegations made in the complaint, the accused persons allegedly tortured Sumra Abbas Haji, brother of the complainant, after arresting him on 12th October, 1986 and fractured his hands and legs and damaged his kidneys. Said Sumra Abbas Haji was produced before the Court on 13.10.1986 in an injured condition, where a complaint was lodged before JMFC and was directed to be taken to Irvin Hospital through jail authorities. As there was no improvement in the condition at Irvin Hospital, Sumra Abbas Haji was sent to Ahmedabad Civil Hospital, where he expired on 26th October, 1986. It was alleged that complaints were made before higher officers of the Police, but no action is taken obviously because the persons involved in commission of the crime are Police officers. Ultimately, said complaint was sent under Section 156(3) of Cr.P.C for investigation, with a direction that the investigation should be carried out directly under the supervision of DIG, Rajkot, by order dated October 30, 1986.

3.2 After investigation, summary "C" was sought by the Police. Objection was raised by the original complainant, however, after hearing both the sides,

learned JMFC rejected the prayer for summary "C" and ordered that enquiry be held under Section 202 of Cr.P.C by order dated 8.7.1987.

3.3 The said order was challenged in Revision before Sessions Court, by preferring Criminal Revision Application No. 54 of 1987. The said revision was accepted by the Sessions Court by judgement and order dated 6.2.1988, whereby the said order of learned JMFC dated 8.7.1987 was set aside and JMFC was directed to follow the provisions of Sections 190, 200, 201 and 202 of Cr.P.C in light of the decision of the apex Court.

3.4 The matter went back to the Court of learned JMFC, who again passed an order on November 20, 1989, directing issuance of bailable warrant in the sum of Rs. 5,000/- against all the accused persons. The said order was passed following the direction of the Sessions Court in the Revision Application. Accordingly, bailable warrants have been executed against the accused persons. The order of issuance of bailable warrant has not been challenged on any count before any forum.

3.5 After hearing both the sides, learned Chief Judicial Magistrate, Jamnagar passed an order on April 10, 1990, committing the case to the Court of Sessions. At the time of hearing, a contention was raised that directions of the Sessions Court in Revision Application No. 94 of 1988 have not been complied with. However, that objection was turned down by the Chief Judicial Magistrate while passing the order of committal.

3.6 Twelve years thereafter, on July 8, 2002, an application has been preferred by a co-accused of the revisioner, D.K. Dodiya, praying for remand of the case to the Magisterial Court for compliance of direction of the order of the Sessions Court in Criminal Revision Application No. 54 of 1987 and 94 of 1988 and that application having been rejected by the Sessions Court, present Revision application is preferred by revisioner who is also an accused.

4. Learned Advocate Mr. Panchal appearing for the revisioner submitted that mandatory requirement of law as having been settled by a pronouncement of this Court as well as apex Court of recording statement of complainant under Section 200 of Cr.P.C before proceeding under Section 202 of Cr.P.C has not been followed by the learned Magistrate. Therefore the Sessions Court ought to have remanded the matter to the trial Court. Mr. Panchal submitted that the revisioner, challenges only

that part of the order which rejects application Ex. 41 and not rejection of application Ex. 11 for discharge of the accused.

4.1 Mr. Panchal has placed reliance on the decision of this Court in Badruddin Mohamad Ali Vohra Vs. State of Gujarat, (1973 GLR 605) and submitted that this revision application may be entertained. It was contended by Mr. Panchal that serious prejudice would be caused to the interest of the accused persons, inasmuch as, in absence of statements under Section 200 of Cr.P.C the accused will be deprived of the right of contradicting or confronting the witnesses with their previous statement at the time of the trial and therefore this revision may be allowed.

5. Learned Additional Public Prosecutor Mr. P.R. Abichandani has opposed to this revision application. According to him, there is substantial compliance of the requirement as statements have already been recorded by the Court below. The trial is going to be conducted by the Court of Sessions and the accused persons will have those statements as previous statements, which may be used for contradicting the witnesses, if there are contradictions. No prejudice therefore is going to be caused to the interest of the revisioner. It is also contended that an attempt is made to take a circuitous route to a relief which could not have been prayed for directly by the revisioner and it was therefore urged that the revision may not be entertained. It is also submitted that attempts are made to dodge and delay the trial by prefering this revision application by revisioner when he has uptil now not challenged the order for such a long time.

6. Having regard to the contentions raised before this Court, it has to be stated at the out-set that a unique strategy is adopted by the revisioner to delay the proceedings, which is obvious if following factors are considered.

(a) Sessions Court passed order in Criminal Revision application No. 54 of 1987 on 6.2.1988 and remanded the matter to the trial Court with certain directions;

(b) Following that order, JMFC passed an order on 20th July, 1988, after hearing both the sides, issuing process and non-bailable warrant;

(c) Challenging that order, a Criminal Revision

Application No. 94/88 came to be preferred by one of the accused, namely M.M. Jadeja. At that stage the revisioner did not challenge said order of learned JMFC and accepted it. The said Revision Application was disposed of on 1.9.1988 by setting aside the order taking cognizance and issuing non-bailable warrant with a direction to hold enquiry under Section 202 of Cr.P.C.

(d) The matter again went back to the Magisterial Court and learned JMFC passed order on November 20, 1989, taking cognizance of the offence, directing issuance of bailable warrant against the accused persons in amount of Rs. 5,000/each. Undisputedly, the said order was not challenged and accepted by the revisioner.

(e) Thereafter, on April 10, 1990, Chief Judicial Magistrate, Jamnagar committed the case to the Court of Sessions. At that point of time, contention regarding non-compliance of direction in Criminal Revision Application No. 94/88 was raised before JMFC but it was turned down. This order also has not been challenged before a higher forum and is thus, accepted by the revisioner.

(f) Thereafter on July 8, 2002, one of the accused D.K. Dodiya (Not the revisioner) preferred Application Ex. 41, praying for remand of the case to the Magisterial Court for compliance of direction in Criminal Revision Application No. 54 of 1987 and 94 of 1988, which has been rejected.

Till preferring this revision application, the present revisioner has not challenged the order of the JMFC dated Nov. 20, 1989 or April 10, 1990. The revisioner has, till preferring this revision application has never prayed for or pressed for compliance of the order of the Sessions Court in Criminal Revision Application No. 54/87 or 94/88. It is only the co-accused who insisted for compliance of order in Criminal Revision Application No. 54 of 1987. It is only thereafter that the revisioner approaches this Court with this Revision Application. In other words, he challenges the order of November 20, 1989 for the first time by preferring this Revision application on 5.9.2002, nearly after 13 years and that too on a technical ground,

namely that statement under Section 200 of Cr.P.C has not been recorded before proceeding under Section 202 of Cr.P.C and this technical point is pressed in service under a garb of prejudice to the interest of the accused of confronting or contradicting witnesses at the time of the trial.

7. It has to be noted that this very point was raised before Chief Judicial Magistrate at the time of the committal proceedings, which was turned down. The revisioner was aided by able legal advice. He is himself a Police Officer. He had earlier preferred Revision Application No. 54 of 1987 before Sessions Court and therefore, by necessary inferences he can be said to be aware of his legal rights. Still the order dated 10.4.1990 has not been challenged by him till this Revision Application is preferred.

8. It would also be appropriate to mention at this stage that the prejudice argued with much amplification does not seem to be real for the reason that statements of witnesses have already been recorded by the Magisterial Court, as can be seen from the order of the Chief Judicial Magistrate, Jamnagar dated Nov. 20, 1989, in paragraph 4 and this aspect is not challenged. Therefore, statements of witnesses are already recorded, may be, not under Section 200 of Cr.P.C, but in substance no prejudice is likely to be caused to the accused at the time of trial before the Sessions Court, as the accused will have these statements as previous statements of the witnesses for the purpose of confrontation or contradiction.

8.1 It is clear that the revisioner, in substance challenges the action of Magisterial Court while taking cognizance and issuing bailable warrant in 1989 and the order of commital in 1990. But obviously to come out of the clutches of limitation and inordinate delay, a circutious route is adopted of prefering application Ex. 41 and then challenging that order by this revision. The revisioner takes no objection to the said order for 13 years as long as the trial does not commence. He suddenly feels aggrieved by non-recording of statement under Section 200 of Cr.P.C, only when the matter is fixed for trial!! There is no question of any miscarriage of justice. It is not even indicated except the prejudice as discussed above. Exercise of revisional power is therefore, not warranted.

8.2 In the opinion of this Court this is a classic

example of causing hurdle in the legal process and delaying the proceedings on technicalities. Procedural laws are made to facilitate and not to obstruct the process of law. The provisions cannot be read in a manner which would obstruct the process of law. As discussed above, no prejudice is going to be caused to the interest of the accused. The accused has come before this Court to challenge the order after 13 years. The order which is impugned herein is passed by the Sessions Court in an Application preferred by another accused and not the revisioner. Under these circumstances, this Revision Application does not merit acceptance.

8.3 The decision relied upon by Mr. Panchal in the case of Badruddin Mohmad Ali Vohra Vs. State of Gujarat and ors., reported in 1973 GLR page 605, cannot help the revisioner. It is true that it was observed that a Magistrate has to record statement under Section 200 before proceeding under Section 202 of Cr.P.C. There cannot be any dispute about the legal porposition, but in the peculiar facts and circumstances of this case, no fruitful purpose is going to be served by accepting the revision and remanding the matter, except that the trial would be further delayed! Statements of complainant and witnesses are already recorded, may be technically speaking, not under Section 200 of Cr.P.C, but as stated above no prejudice is likely to be caused to the interest of revisioner/accused at the trial. In opinion of this Court therefore, there is substantial compliance of the requirement. It is in such cases where a hyper technical approach has to be avoided and a pragmatic approach has to be adopted to facilitate the legal process. The fact that the complainant is awaiting justice for 16 years is a relevant factor and can not be ignored by giving undue, unwarranted and undeserving importance to hyper technical pleas of accused in absence of any prejudice. When no prejudice is going to be caused to the interest of the revisioner, when statements of complainant and witnesses are already recorded, in absence of any other contention there is no point in entertaining this Revision. The revision therefore, must fail. The same is dismissed. Rule is discharged. Interim relief stands vacated.

(A.L.Dave, J.)

*/Mohandas